IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2006

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THE HONOURABLE MR. JUSTICE P.SATHASIVAM

C.R.P.(PD)No.936 of 2006
& MP No.1 of 2006

Periyasamy Konar .. Petitioner

Vs.

Pachaiyammal .. Respondent

Civil Revision Petition under Article 227 of the Constitution of India against the order dated 17.01.2006 made in I.A.No.601 of 2005 in O.S.No.398 of 2004 on the file of District Munsif-cum-Judicial Magistrate, Tittakudi.

For petitioner : Mr.V.Anand
For respondent : No appearance

ORDER

The above Civil Revision petition is directed against the order of the learned District Munsif-cum-Judicial Magistrate, Tittakudi, dated 17.01.2006 made in I.A.No.601 of 2005 in O.S.No.398 of 2004, in and by which, the learned Judge dismissed the petition filed for appointment of Advocate Commissioner.

2. Heard the learned counsel for the petitioner. Though the respondent was duly served notice from this Court, he has not chosen to contest the revision by engaging a counsel.

3. It is not in dispute that when the suit was pending before the Sub Court, Viruthachalam, the petitioner-defendant, after getting an order of appointment of Commissioner, has not deposited/paid the Commissioner's remuneration, due to which the said petition was dismissed. Thereafter, the suit was transferred to the present Court viz., the District Munsif-cum-Judicial Magistrate, Tittakudi. The learned Judge, after finding that already an order was passed by the Sub Court, Viruthachalam, appointing the Commissioner, has dismissed the present application. It is not in dispute that it is for the respondent plaintiff to establish his case by letting acceptable evidence. In such circumstances, I am of the view that there is no need on the part of the defendant to seek for

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appointment of Commissioner. No doubt, the learned counsel for the petitioner has submitted that in order to establish that there is a wall and not a pathway in the suit property, it is but necessary to take the Commissioner for noting the same. I am unable to accept the same. As a defendant, he cannot depend on the Commissioner's report alone. He could very well put forth his defence by placing acceptable evidence by examining himself and also the person/persons conversant with his defence as pleaded in the written statement. Even otherwise, in view of the conduct of the petitioner in not depositing the Commissioner's remuneration, even on the ground of equity, I am of the view that the petitioner is not entitled to any relief. I am in agreement with the conclusion arrived at by the Court below. Consequently the Civil Revision petition fails and the same is dismissed. No costs. M.P.No.1 of 2006 is also dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

raa

To

The District Munsif-cum-Judicial Magistrate, Tittakudi.

+ 1 CC to Mr.V.Anand Advocate SR NO 57865.

CRP PD No.936 of 2006

NA(CO)
RVL 15.12.2006

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